

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0135

Sales Tax

For Tax Years 2003-2004

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Sales Tax—Unitary Transactions

Authority: IC § 6-2.5-1-1; IC § 6-8.1-5-1; Information Bulletin 21

Taxpayer protests the imposition of sales tax on unitary transactions.

II. Tax Administration—Negligence Penalty

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a lawn care business. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for sales and use tax. Taxpayer protests the imposition of sales tax on unitary transactions. Further facts will be supplied as required.

I. Sales and Use Tax—Unitary Transactions

DISCUSSION

Taxpayer protests imposition of sales tax on lawn care services provided to its customers. The Department imposed sales tax on the total amount taxpayer charged its customers for the lawn care services since the services constituted a unitary transaction. Sales tax application to unitary transactions is explained by IC § 6-2.5-1-1, which states:

- (a) Except as provided in subsection (b), "unitary transaction" includes all items of personal property and services which are furnished under a single order or

agreement and for which a total combined charge or price is calculated.

(b) "Unitary transaction" as it applies to the furnishing of public utility commodities or services means the public utility commodities and services which are invoiced in a single bill or statement for payment by the consumer.

Taxpayer believes that the Department is singling out lawn care services for taxation. Taxpayer believes this position is supported by the Department's reference to Information Bulletin 21 in the audit report. Information Bulletin 21 explains that lawn care services are unitary transactions and that sales tax applies to the entire amount a lawn care service charges its customers.

Information Bulletins are intended to provide non-technical assistance to the general public. The Department's reference to Information Bulletin 21 in the audit report was only intended as additional assistance for taxpayer to understand the taxation of unitary transactions in the lawn care industry. The proposed assessments were based on IC § 6-2.5-1-1, which applies to all unitary transactions, not just lawn care services.

Taxpayer also states that it did not always provide the chemicals, such as fertilizer and weed killer, for the lawn services it provided. Taxpayer has not provided any documentation in support of its protest. The Department refers to IC § 6-8.1-5-1(b), which explains that the burden of proving a proposed assessment wrong rest with the person against whom the assessment is made. In this case, taxpayer has failed to meet that burden.

In conclusion, the Department based the assessments on IC § 2.5-1-1, not on Information Bulletin 21. Since the lawn care services were unitary transactions, it was proper to impose sales tax on them. Taxpayer has not met the burden of proving the proposed assessments wrong, as required by IC § 6-8.1-5-1(b).

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty

DISCUSSION

The Department issued proposed assessments and a ten percent negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty. The Department refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a new assessment which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). As part of this protest, taxpayer has established that its failure to collect the sales tax discussed in Issue I was due to reasonable cause and not negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is sustained.

WL/BK/DK October 17, 2006